IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7495 OF 2006

Manohar Raghu Ghodake
& Ors. .. Petitioners.

vs.

Smt. Bayakka alias Anusaya
w/o. Hari Ghodake
& Ors. . .. Respondents.

Mr. N.J. Patil for petitioners.
Mr. T.S. Ingale for Respondent Nos.1 & 2.

CORAM : A.P. DESHPANDE, J.

DATE : 24th November, 2006.

P.C.

. The present petitioners are original defendants against whom a suit was filed by the respondents/plaintiffs. The trial court dismissed the suit. Hence, the respondents instituted a regular civil appeal in the court of District Judge. On account of continuous absence on the part of the respondents, the first appellate court had no option but to proceed to decide the appeal in the absence of the respondent. The respondents have not even engaged a lawyer, though they claim to have

appointed one Mr. K.D. Patil, his power was not filed and no further details in regard to engaging him are brought on record.

2. In the above fact situation, the petitioners moved an application for setting aside the ex-parte judgment and decree passed by the first appellate court mainly by raising a contention that the service of the appeal summons was effected on the son of the applicant no. 1 and hence the said service is bad in law. The first appellate court has found that the son is major and is residing with his father in the same house. Thus, the service has been held to be good. Similarly, in so far as service on the applicant no. 3 is concerned, it was objected on the ground that the said service by affixing notice was by having recourse to the substituted mode of service. The first appellate court has recorded a finding of fact that the applicant no. 3 was served with substituted service by affixing the notice on conspicuous part of her house and thus it constitutes a valid service under Order 5 Rule 17 of CPC.

3. Perused the order. It does not call for interference. Hence, the writ petition is summarily dismissed. However, it is made clear that it shall be open for the petitioner to file regular second appeal if permissible in law raising all grounds

touching the merits of the matter.

4. At this stage, the counsel for the petitioners submits that the first appellate court had already stayed the impugned order for one month and a prayer is made to continue the stay for a period of two weeks to enable the petitioners to file second appeal. In the result, the impugned order passed by the first appellate court shall remain stayed for a period of two weeks.

(A.P. Deshpande, J.)